

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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IN RE: TARGET CORPORATION  
CUSTOMER DATA SECURITY  
BREACH LITIGATION

Case No. : 0:14-md-2522-PAM

TRANSCRIPT  
OF  
PROCEEDINGS  
(STATUS CONFERENCE)  
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The above-entitled matter came on for STATUS CONFERENCE before Judge Senior Judge Paul A. Magnus and Magistrate Judge Jeffrey J. Keyes, on May 14th, 2014, at the United States District Courthouse, Devitt Courtroom, 316 N. Robert Street, St. Paul, Minnesota 55101, commencing at approximately 11:00 a.m.

Reported by: RONALD J. MOEN, OFFICIAL COURT REPORTER, CSR,  
RMR

CALIFORNIA CSR NO. : 8674

ILLINOIS CSR NO. : 084-004202

IOWA CSR NO. : 495

RMR NO. : 065111

APPEARANCES

CHESTNUT, CAMBRONNE, PA, 17 Washington Avenue North, Suite 300, Minneapolis, Minnesota 55401-2048, by KARL L. CAMBRONNE, Attorney at Law, appointed as the overall Lead Counsel.

REINHARDT, WENDORF & BLANCHFIELD, 332 Minnesota Street, Suite E-1250, St. Paul, Minnesota 55101, by GARRETT D. BLANCHFIELD, JR., Attorney at Law, appointed as the overall Liaison Counsel.

HEINS, MILLS & OLSON, PLC, 310 Clifton Avenue, Minneapolis, Minnesota 55403, by VINCENT J. ESADES, Attorney at Law, appointed as the Consumer Lead Counsel.

NICHOLS, KASTER, PLLP, 80 South Eighth Street, Suite 4600, Minneapolis, Minnesota 55402-2242, by E. MICHELLE DRAKE, Attorney at Law, appointed as the Consumer Liaison Counsel.

ZIMMERMAN, REED, PLLP, 1100 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, by CHARLES S. ZIMMERMAN, Attorney at Law, appointed as the Bank Lead Counsel.

LOCKRIDGE, GRINDAL, NAUEN, PLLP, 100 Washington Avenue South, Suite 2200, Minneapolis, Minnesota 55401-2179, by KAREN HANSON RIEBEL, Attorney at Law, appointed as the Bank Liaison Counsel.

1 APPEARANCES (Continuing)

2 ROBBINS, ARROYO, LLP, 600 B Suite 1900, San Diego,  
3 California 92101, by FELIPE J. ARROYO, Attorney at Law,  
4 appointed as the Shareholder Lead Counsel.

5 WALSH LAW FIRM, 100 South Fifth Street, Suite  
6 1025, Minneapolis, Minnesota 55402, by CHRISTOPHER R. WALSH,  
7 appointed as Shareholder Liaison Counsel.

8 FAEGRE, BAKER, DANIELS, LLP, 90 South Seventh  
9 Street, Suite 2200, Minneapolis, Minnesota 55402-3901, by  
10 WENDY J. WILDUNG, Attorney at Law, appeared as counsel on  
11 behalf of Defendants Target and the Target affiliates in the  
12 consumer class actions and the bank class actions, and  
13 appeared as counsel on behalf of Defendants Target and the  
14 individual defendants in the shareholder derivative actions.

15 MORRISON & FOERSTER, LLP, 425 Market Street, 32nd  
16 Floor, San Francisco, California 94105-2482, by HAROLD J.  
17 McELHINNY, DAVID McDOWELL AND MICHAEL AGOGLIA, Attorneys at  
18 Law, appeared as counsel on behalf of Defendant Target in the  
19 MDL cases.

20 BERENS & MILLER, P.A., 3720 IDS Center, 80 South  
21 Eighth Street, Minneapolis, Minnesota 55402, by JUSTI RAE  
22 MILLER, Attorney at Law, appeared as counsel on behalf of  
23 Defendant Affiliated Computer Services, Inc.

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25

1 THE COURT: Good morning, everyone, and welcome to  
2 those of you who are on the telephone. (Phone beeps).  
3 Welcome to somebody else, too. We thank you for joining us  
4 this morning. We have the matter of the Target Corporation  
5 Customer Data Security Breach MDL Litigation before us.

6 I've asked that Judge Keyes sit with me because,  
7 quite candidly, you'll be seeing as much of him, probably, as  
8 you will of me, and I anticipate that you probably will be  
9 seeing more of both of us than you really desire.

10 There are a number of people on the telephone, and  
11 I'm going to read this list of names, simply to note this  
12 factor. And hopefully everybody is there. Wendy Behan,  
13 Aashish Desai, Cari Laufenberg, Benjamin Lopatin. Somebody  
14 from the Cohen, Milstein, Sellers & Toll firm; I don't have  
15 the name there.

16 MR. FRIEDMAN: Andrew Friedman.

17 THE COURT: I'm sorry, would you repeat, sir?

18 MR. FRIEDMAN: It's Andrew Friedman from the Cohen  
19 firm.

20 THE COURT: Okay. Very good. Thank you very much.

21 MR. FRIEDMAN: Thank you, your Honor.

22 THE COURT: Scott Gilchrist, Michael Smith, Rebecca  
23 Quinn or Scott Levy, Tim Howard, Eric Zagrans, Bill Caldes,  
24 Cory Nelson, and Steven Murphy.

25 You should also be aware that I've received contact

1 from other lawyers that I've excused from this session this  
2 morning, including Paul Geller, Michael Havard, Curtis  
3 Warner. These are all just comments that are made to let you  
4 know the status of that.

5 Because it's on the same crib sheet, I'll use this  
6 crib sheet. There may be times this morning that different  
7 groups of different people are going to want to break off and  
8 have some caucuses. That's very understandable. We have a  
9 series of rooms throughout the building available for you.  
10 It will include the chambers to this courtroom, which is, in  
11 fact, behind us; a conference room for this courtroom that  
12 also is back behind us; the jury room here behind us. On  
13 this floor, over to your left, my right, Rooms 175, 176 that  
14 are conference rooms. And, then, on the Seventh Floor there  
15 are five or six rooms up there -- conference rooms, attorney  
16 conference rooms, as well as my courtroom and other  
17 courtrooms that are not in use. That would include Judge  
18 Kyle's courtroom. And on the Sixth Floor, Courtroom 6A and  
19 6B are also available. So there's lots of places for lots of  
20 people to go if they desire that type of thing. We won't  
21 make any assignments; we won't do anything of that nature,  
22 we'll just pick it up and do as best we can.

23 I'm not going to ask, obviously, plaintiff  
24 appearances; we'd miss dinner. But I think it would be  
25 appropriate to ask appearances on behalf of Target, because I

1 think associating names and faces with respect to that are  
2 appropriate. Number one, I don't know. But, secondly, I  
3 don't know that various counsel know the people that are  
4 appearing on behalf of Target. So if we could have the  
5 people from Target.

6 Ms. Wildung.

7 MS. WILDUNG: Thank you, your Honor. Wendy Wildung  
8 from Faegre, Baker, Daniels. I represent Target and the  
9 Target affiliates in the MDL cases, which are the consumer  
10 class actions and the bank class actions. And in the  
11 shareholder derivative cases, I represent Target and the  
12 individual defendants.

13 THE COURT: Okay. Thank you.

14 MR. McELHINNY: Good morning, your Honor. My name  
15 is Harold McElhinny. I'm from Morrison & Foerster. I  
16 represent Target in the MDL cases. I'm here with my partners  
17 David McDowell and Michael Agogliia.

18 THE COURT: Okay. Thank you.

19 MS. MILLER: Good morning, your Honor.  
20 Justi Miller. I do not represent Target. I represent the  
21 one and only other defendant, Affiliated Computer Services,  
22 Inc. I thought I should at least say hello.

23 THE COURT: I welcome you, too. As a matter of  
24 fact, we'll have to someplace have a little discussion with  
25 you with respect to all of that.

1                   Okay. Anybody else on the defense side? Okay.  
2           Very well. Thank you very much. Now, let's start to visit a  
3           bit about the various factors that are involved with today.  
4           I think that you've been given an agenda for today, that we  
5           may or may not follow, but we'll probably generally be  
6           following it. I do think, as we start out today, that you  
7           need to know that I have never experienced, and I would be  
8           surprised if I experience it today, an awful lot accomplished  
9           on the first day of a meeting of an MDL. This is a time for  
10          people to get to know each other a little bit, it's a time  
11          for you to get to know me a little bit, to get to know  
12          Judge Keyes a bit. You've got a pretty good book on both of  
13          us by now, but, nevertheless, this will give you an  
14          opportunity to get to know us a little bit, and you'll get to  
15          know a little bit of the culture of litigation in Minnesota.  
16          I don't think it's a lot different than it is anywhere else,  
17          but it, nevertheless, is Minnesota. And we like to refer to  
18          ourselves as "Minnesota nice" and, so, we'll try to function  
19          and work through our processes of this case in that same  
20          attitude and approach.

21                   As we look at the case, we've been advised by the  
22          plaintiffs that there are a hundred and eleven pending cases.  
23          Not surprisingly, the Clerk's Office tells me that there are  
24          80. Sometimes it takes a while to catch up with things,  
25          sometimes things are a little different than what they're

1 projected; but through the whole process that will clean out.

2 On the other hand, on the bank cases, there you're  
3 telling us that there are 29 bank cases, but the Clerk's  
4 Office has got 30. So somebody snuck in the back door and  
5 dropped another case.

6 On the shareholder cases, there are, to the best of  
7 my knowledge, only four cases pending. And in those four  
8 cases that are pending, they are, I think, fairly well  
9 unified as they are in derivative proceedings.

10 With respect to the subject of motions pending in  
11 these transferred actions, to the best of my knowledge, there  
12 are no pending motions at this time completely filed.  
13 Judge Gettleman had a series of them in Chicago, but, to the  
14 best of my knowledge, those were dismissed without prejudice,  
15 to be refiled when they got here.

16 Yes, sir.

17 MR. YANCHUNIS: Should I use the podium?

18 THE COURT: Please do. As the first honoree in  
19 that regard, if you'd be kind enough, as you step forward, to  
20 give your name and cases you're representing, so that the  
21 reporter would have the information and I'll have the  
22 information. Go ahead.

23 MR. YANCHUNIS: Thank you, your Honor. My name is  
24 John Yanchunis. I'm with the law firm of Morgan & Morgan, in  
25 Florida. I was last before you eight or nine years ago in



1        *Thrivent Financial*. I am a representative of 46 law firms in  
2        42 cases; a number of them were pending in the Northern  
3        District of Illinois before Judge Gettleman. In the hearings  
4        that we had before Judge Gettleman, motions were either  
5        denied, were rendered moot, based upon representation of  
6        Target, but there is a motion for class certification pending  
7        in connection with those cases that were filed in Illinois  
8        and consolidated.

9                THE COURT: Okay.

10              MR. YANCHUNIS: That is the only motion I believe  
11              that's pending.

12              THE COURT: Okay. Well, thank you for bringing  
13              that to my attention. I guess I'd put it this way: If there  
14              isn't a class motion pending, there sure is going to be one.

15              MR. YANCHUNIS: Yes, your Honor, that's true.

16              THE COURT: That's fine. Okay. Thank you very  
17              much. Now, I want to talk just a little bit about grouping  
18              of these cases. And you probably, as I was just discussing  
19              it, have picked up what's very much in my mind. And  
20              Judge Keyes and I have discussed this, as well. It's our  
21              feeling -- and even the way we had you sign in this morning  
22              you can see this -- it's our feeling that these cases are  
23              appropriately divided into three major areas: There are the  
24              consumer cases, there are the bank cases, and there are the  
25              shareholder cases that are derivative cases. And while I

1 think the case needs to be handled and managed from one  
2 overriding and overbridging source, nevertheless, the actual  
3 breakdown of the work that needs to be done in putting the  
4 litigation to resolution is going to need to be divided off  
5 into these three different branches. I anticipate that you  
6 can expect that we will be progressing in that way. Now,  
7 there are two cases filed -- I don't know the names of them  
8 -- but there are two cases filed where the litigation was  
9 brought as both a combined consumer and bank in that  
10 individual litigation. I've heard a rumor that the parties  
11 filing that are amenable to the idea of amending the  
12 Complaints and breaking it into two. I don't know if that's  
13 true or not, but I would kind of encourage it and hope that  
14 that can happen.

15 Sir.

16 MR. HAAG: Thank you, your Honor. Eric Haag. I  
17 have one case that your Honor referred to in the footnote,  
18 *Schafer*, which was a case with both subclasses. And I have  
19 filed a notice of voluntary dismissal of the consumer side of  
20 that.

21 THE COURT: Okay. Very well. That takes care of  
22 that subject, then. Thank you.

23 The next thing that's on the agenda is the  
24 continuation of the stay or the duration of the stay. I  
25 think maybe we should defer that for a little bit here --

1 well, there's got to be a little bit of a stay in all of  
2 this. I think once we kind of get a little organized, it's  
3 going to be a lot easier to figure out just how long that  
4 stay should be. Let me tell you that I don't think it's  
5 going to be very long because I think within the next month  
6 or so we really will want to be up and running.

7 I hate to give the defendants bad news right out of  
8 the gun, but I'm going to do it, because why not give  
9 advisory opinions in these. I know Target would like to have  
10 big, long indefinite stays, because that's just the nature of  
11 the business. You're not going to get it unless you really  
12 persuade me in a motion. I don't see it's appropriate to put  
13 any kind of indefinite stays on this case at all.

14 That will lead down to the next thing that's on the  
15 agenda and that's the consolidated or the amended --

16 MAGISTRATE JUDGE KEYES: Ms. Wildung wants to say  
17 something.

18 THE COURT: I'm sorry, Ms. Wildung.

19 MS. WILDUNG: Your Honor, if I may for a moment  
20 address the question of a stay.

21 THE COURT: Sure.

22 MS. WILDUNG: There is some additional updated  
23 information that I'd like to provide the Court relative to  
24 the shareholder derivative cases, things that have occurred  
25 since we submitted our initial case management conference.

1 As the Court knows, those claims that are being asserted in  
2 the shareholder derivative cases belong to Target, and there  
3 are always threshold questions about whether an individual  
4 shareholder can bring those claims. The new development is  
5 this: Another shareholder has now made a written demand on  
6 Target's board. At the board meeting -- which is coming up  
7 in June -- the board will consider that demand. I anticipate  
8 that it's highly likely the board will appoint a Special  
9 Litigation Committee and, at that point in time, it is  
10 customary for the company to request a stay of derivative  
11 cases to allow the Special Litigation Committee to commit its  
12 work. So I just want to highlight to the Court that that may  
13 be coming, and I do think that is a new development that the  
14 Court will want to consider.

15 THE COURT: Do you know the date of that board  
16 meeting?

17 MS. WILDUNG: June 11th, your Honor.

18 THE COURT: Okay. I really ask that question as  
19 much as anything because -- I'll just say it now, tentatively  
20 we are thinking that we'd have another status conference on  
21 Wednesday, the 25th of June. Potentially by that time you  
22 would be in a better position to communicate, as well as the  
23 Court, knowing how to deal with whatever that situation might  
24 be.

25 MS. WILDUNG: And we would want the shareholder

1 derivative plaintiffs to have an opportunity to know what the  
2 situation is, and be heard on the issue, as well. But I did  
3 want to advise the Court of that.

4 THE COURT: Thank you very much. Incidentally, I  
5 gave that one date. So I don't forget it, I'm going to keep  
6 on this. We're thinking, for status conferences, that we'd  
7 have one on the 25th of June, another one on Thursday, July  
8 24, and another one on Thursday, August 14. No definitive  
9 agendas or anything else yet formed. But for practical  
10 purposes, trying to get some scheduling outlined the best we  
11 can, we just set those dates aside.

12 The next thing that will come into play is  
13 something that's going to have to be determined by people  
14 after today or later in the day and that is whether or not  
15 there will be consolidated Complaints in this proceeding. It  
16 kind of gets down to a series of factors. A consolidated  
17 Complaint or a series of consolidated Complaints can be  
18 pretty efficient in the litigation, obviously, and you're  
19 going to find courts encouraging it and you're going to find  
20 us encouraging it. Sometimes it's not possible. And we know  
21 that. One of the fortunate factors in this case versus so  
22 many MDL cases is that this case does not have a lexicon  
23 problem. We've had more litigation in Minnesota than you can  
24 shake a stick at. If we need bellwether cases, fine.  
25 They're here. If we have a consolidated Complaint and we

1 proceed in Minnesota, fine. We're here. We'll be here  
2 either way. You folks are stuck with us on that. But, of  
3 course, obviously, at the end of the day, if it's appropriate  
4 that there be remand, there will be, but that will be a ways  
5 down the road. As I said, there probably isn't much more  
6 that we can really say about that.

7 The same thing kind of comes down on this initial  
8 disclosure factor. I want to encourage that there will be an  
9 initial disclosure -- oh. I got a note that those of you in  
10 the back can't hear me. I apologize for that. Number one, I  
11 probably was not speaking into the microphone and I should  
12 have been. Number two, I'm not used to this courtroom. In  
13 your own courtroom you kind of learn how loud you need to  
14 talk. I haven't figured that out on this one yet. And  
15 incidentally, this may be the last time any of you will ever  
16 be in this courtroom. But, nevertheless, if you're not  
17 hearing, why, please, cup your hand and we'll speak up.

18 On the subject of disclosures, my anticipation will  
19 be that after we get the organization put together, the  
20 parties can then work out just when the appropriate time for  
21 disclosures would be. Obviously if the parties can't do it,  
22 we will. I don't think that probably is going to be a  
23 particular major issue. And one of the reasons I say that --  
24 and I'm just going to break off onto it now, you were given  
25 today this sheet of what people have talked about as

1 potential agendas in this case. And I think it's rather  
2 remarkable, because these comments have come from all over  
3 the United States, and lawyers in all kinds of different  
4 practices, they are amazingly comparable. Sure, there are  
5 the usual differences, that's natural. But I think that they  
6 overall are amazingly comparable. I think, as a result of  
7 that, I do not envision, in scheduling of this entire  
8 litigation, great difficulties with respect to that. I will  
9 go right down to the bottom line of this sheet and that is a  
10 great deal of respect on my part for the ready-for-trial  
11 time, because it does seem to me that scheduling ourselves to  
12 have the case prepared for trial on the consumer cases early  
13 in 2016 -- nothing like trying a case in Minnesota in  
14 January, I want you to know that -- and, then, the bank cases  
15 in February, and followed in that spring with the derivative  
16 cases, it's a doable schedule. A number of people in the  
17 room are going to have to exercise a craft between now and  
18 then in order to accomplish that schedule. But, again, I  
19 respect, I appreciate the suggestions that have been made  
20 here. There are no decisions on this. This is just what you  
21 told us. I think it looks like it can be worked out.

22 On the overall thing of discovery and case  
23 management, let me make a couple of comments, one is  
24 Judge Keyes and I will be available in this case when this  
25 discovery thing gets going. Yes, there are rules for both

1 motions on discovery and dispositive motions and, yes, I  
2 follow some of them. There's one you do need to make a  
3 little note of and that's our local rule has a way of getting  
4 dispositive motions before the Court. We have three old  
5 judges on our bench, and the three old judges didn't get the  
6 memo on the rules and, as a result of that, we set this up so  
7 that follow-up practice on dispositive motions that we have  
8 in hand, the completed briefing, 14 days before the hearing.  
9 On complex matters, we'll follow that because, quite  
10 candidly, when you've got several feet of material to work  
11 through, you need the 14 days preparatory to the hearing and,  
12 so, we will follow that. On the other hand, on both  
13 dispositive and nondispositive motions, Judge Keyes and I are  
14 very willing to accept stipulated briefing schedules on  
15 matters that are much shorter. If you've got a dispute as to  
16 whether or not you're going to take a deposition in Chicago or  
17 if you're going to take it in Memphis, we don't need four  
18 weeks to figure that out. Get on the telephone and we'll  
19 tell where you it's going to be. On the other hand, common  
20 sense fits into that as to what kind of subject matter you're  
21 dealing with. But we are very amenable to stipulating and  
22 shortening those briefing schedules, because we're not  
23 interested in delaying the litigation while files just sit  
24 and smolder. Aside from that, on the motion practice, I  
25 don't believe there are any motions to remand. Now, if I'm



1 wrong about that, I can be advised. But I don't think that  
2 there will be. There will be, as we talked about earlier, I  
3 think potential of a motion of consolidated pleadings. I  
4 would just be the most shocked guy in town if I ever got a  
5 Rule 12 motion from Target, but it just could happen. And  
6 that, again, will also have to be scheduled out once we know  
7 what you're looking at in the last best iteration that you  
8 can find for the defense to look at. And the defense, of  
9 course, will need to put together that Rule 12 motion. And,  
10 again, we'll try to work our way through it as expeditiously  
11 as possible. Get that before the Court so that the  
12 parameters of the lawsuit, et cetera, are set forth and are  
13 out there.

14 Class-action allegations and motion practice  
15 relating to that, as a preliminary matter, I do not envision  
16 that there's going to be a division or bifurcation of  
17 discovery as it relates to class and fact discovery. At this  
18 point in time, I just don't see that. But I also recognize  
19 there's a little distance between the cup and the lip. We  
20 have to be aware that there will be factors that we'll get  
21 into before that class-action motion that you have pending,  
22 and any others that are going to be filed, will actually be  
23 teed up and ripe for a decision. I just think that will come  
24 in due time.

25 Now we get down to why a lot of people appeared in

1 the room, and that's to, on the plaintiffs' side, talk about  
2 lead and liaison counsel. I will start to hear from you kind  
3 of in seriatim, however you come up. In doing that, I want  
4 you to know that I am thinking that there will be an overall  
5 lead and an overall liaison counsel. In the shareholder  
6 cases there will also -- I said "shareholder." I meant to  
7 say "consumer cases." In the consumer cases there will also  
8 be a lead and liaison counsel of that portion. In the bank  
9 cases there will be a lead and liaison of that portion. And  
10 on the shareholder cases there would also be a lead and a  
11 liaison. And, then, behind that, once those persons are  
12 selected, then I think there needs to be an organization of  
13 which -- I'm thinking that in addition to the lead counsel on  
14 the overall thing there would probably be an executive  
15 committee of about five people, and about three people on the  
16 consumer cases, and another three people on the bank cases.  
17 I don't think you need an executive committee on the  
18 derivative cases. You've got one law firm. Maybe there are  
19 going to be two pretty soon. We've got one law firm. We  
20 don't need a committee to work on that.

21 I will tell you that any lead and liaison counsel  
22 that are appointed, I anticipate to appoint them for a year,  
23 subject to reappointment by the Court. I've found from  
24 experience that that's appropriate.

25 I'm getting a little ahead of myself here, but I'm

1 going to do it just because it's on the notes. I haven't  
2 quite come to conclusion with the geek squad here in the  
3 courthouse, but we'll get there. I'm going to want  
4 eventually, from all of you that are appearing in the case,  
5 first of all, just a submission -- which I already really  
6 have -- but I'm eventually going to want to get it  
7 electronically so we don't have to retype it -- a listing of  
8 hourly rates that are customary rates for the various levels  
9 of people that work on the case. And that will just kind of  
10 go in there and be set aside. At that point I'm not any  
11 longer worried about hourly rate, but I'm worried about hours  
12 worked. And, so, we're going try to set up an electronic  
13 method of a confidential submission to the Court for  
14 in-camera review -- from both sides -- of time expended, at  
15 the various levels of lawyers, monthly. Once we get this  
16 worked out internally, and the best way to do it, we'll get  
17 back to you on it. I don't have it yet. But once we get  
18 that internally, that will be done. Now, in the same token  
19 I'm going to tell you that I want lawyers that are working on  
20 this case to know that I expect lead counsel to assign work.  
21 I expect that lead counsel will receive from lawyers  
22 quarterly the billing statements of the lawyers, so that lead  
23 counsel is, through the case, on top of this, because --  
24 well, they just simply have to be. And, frankly, those  
25 submissions are going to have to be made timely. They're

1 going to have to come in within 30 days at the end of the  
2 period that's appropriate to report that.

3 Okay. Now let's start talking about lead and  
4 liaison counsel. I know that there are people that have  
5 interest in these positions, and I think it would be  
6 appropriate to hear from those that do have an interest in  
7 filling these positions.

8 Counsel.

9 MR. GIRARD: Good morning, your Honor. My name is  
10 Daniel Girard from Girard, Gibbs in San Francisco. I have,  
11 together with co-counsel from the Hagens, Berman firm, and  
12 the Robbins, Geller firm, submitted my name to your Honor for  
13 consideration. I'm happy to speak to the details. You have  
14 the background. We are seeking to play a role on the  
15 consumer side.

16 MR. CAMBRONNE: Speak into the microphone, please.

17 MR. GIRARD: Sure. I can repeat any portion of  
18 that. But the bottom line is we're seeking to be appointed  
19 in the consumer litigation. My individual client is the  
20 Dorobiala matter, which was filed in the Central District of  
21 California. If you want further discussion on the merits,  
22 I'm happy to talk about my qualifications. You have those on  
23 paper.

24 THE COURT: I really do have those, counsel. So I  
25 think --

1 MR. GIRARD: I'll leave it at that.

2 THE COURT: -- to tell you that I can remember them  
3 all, or anything else -- but I have perused over....

4 MR. GIRARD: Thank you.

5 THE COURT: So thank you very much.

6 MR. CLIFFORD: Your Honor, good morning. I'm  
7 Robert Clifford of the Clifford Law Offices in Chicago.  
8 Please don't hold that against me today.

9 THE COURT: I'll tell you, now let's talk about  
10 lucky shots off the glass. The only difference is that  
11 because of that you and I got to sleep at a reasonable hour  
12 last night.

13 MR. CLIFFORD: Yes, we did. Well, thank you. I  
14 speak today on behalf of myself and my firm and, also, the 46  
15 law firms that we brought together in Chicago before Judge  
16 Gettleman, where Mr. Tom Zimmerman and I and John Yanchunis  
17 were appointed as interim lead counsel there. We seek  
18 position, respectively, John and I, for lead and liaison in  
19 the consumer cases. We've done a lot of work on the cases to  
20 date before Judge Gettleman. We both have a breadth of  
21 experience that we think is valuable to the class. On the  
22 liaison side, for me in particular, I was liaison before  
23 Judge Hellerstein.

24 THE COURT: I'm sorry, I didn't hear that. Would  
25 you repeat that.

1 MR. CLIFFORD: For me, in particular, I was liaison  
2 before Judge Hellerstein in the Southern District of New York  
3 on all the 911 property damage claims, and headed up the  
4 discovery team there when we did the liability discovery. So  
5 bringing those experiences to this case would be one that we  
6 think would benefit the class. And we'd be proud and  
7 privileged to practice before you.

8 THE COURT: Thank you.

9 MR. YANCHUNIS: I think Mr. Clifford carried those  
10 buckets for me, your Honor.

11 THE COURT: Okay. Thank you very much.

12 MR. ESADES: Good morning, your Honor. Vincent  
13 Esades from Heins, Mills & Olson. I guess I'll just round  
14 out what I believe to be the consumer side, attorneys seeking  
15 lead counsel. I'm seeking a lead counsel position in the  
16 case. I submitted that recommendation, which includes the  
17 qualifications under 23(g) and my personal qualifications.  
18 And even what's been outlined by the Court and in terms of  
19 assigning work, it's a position I've been in before, it's a  
20 position I'm comfortable with. I'm proud to say I have the  
21 support of many good firms in the case. I don't have exact  
22 numbers, but they're outlined in our papers. And with  
23 specific experience in this area and, more importantly, with  
24 managing these types of large class actions. Unless you have  
25 any comments for me, I'll just rest on the papers.

1 THE COURT: Okay. Thank you very much.

2 MR. ESADES: Thank you.

3 MR. DAVIDSON: Good morning, Judge. My name is  
4 Stuart Davidson from the Robbins, Geller Law firm. Myself  
5 and my managing partner, Paul Geller, along with the Hagens,  
6 Berman firm and the Girard, Gibbs firm, have asked the Court  
7 to appoint us as lead counsel in the consumer cases. First,  
8 I wanted to thank your Honor for allowing Mr. Geller to be  
9 excused from today, he's undergoing a medical procedure, but  
10 would otherwise be here. The only thing I would like to  
11 point out to your Honor, as far as appointment goes, is that  
12 I believe among all the lead counsel applicants who I believe  
13 have submitted in-camera submissions to your Honor, I believe  
14 we are the only ones that have served as lead counsel in the  
15 Sony data-breach case, which is pending before Judge  
16 Battaglia in the Southern District of California. We got  
17 past the Motion to Dismiss in that case. That case remains  
18 pending. And I believe our experience would bring  
19 substantial effect on behalf of the consumer cases. And I  
20 know Mr. Loeser from the Hagens, Berman firm was an Assistant  
21 U.S. Attorney handling data-breach cases and prosecuting  
22 them. And I think that the qualifications of our three firms  
23 stands apart from others.

24 THE COURT: What is the status of the Sony data  
25 breach? I was curious about it.

1 MR. DAVIDSON: Sure. We've briefed two sets of  
2 Motions to Dismiss in that case. The Court stayed discovery  
3 in those cases. So we had a consolidated Master Complaint  
4 that we filed. The Judge granted the Motion to Dismiss,  
5 primarily without prejudice. We amended that Complaint. We  
6 asserted claims on behalf of consumers from multiple  
7 different states. In that case, we had another full round of  
8 briefing on the Motion to Dismiss, and Judge Battaglia  
9 granted in part and denied in part that Motion to Dismiss.  
10 And that's the current status of the case.

11 THE COURT: Okay.

12 MR. DAVIDSON: Thanks, Judge.

13 THE COURT: It's getting there but not there yet.

14 MR. DAVIDSON: Right.

15 THE COURT: Okay. Yes, sir.

16 MR. BECNEL: Your Honor, I think you have -- I'm  
17 Daniel Becnel from Louisiana. You had an executive committee  
18 or a steering committee and that's what I applied for. I  
19 don't know if you want to hear about that at this point or  
20 not.

21 THE COURT: No. To be honest with you, Mr. Becnel,  
22 my feeling is that I want to get lead and liaison counsel  
23 appointed, and then I want lead and liaison counsel to go to  
24 work at developing the executive committees from throughout  
25 the country that are appropriate with this. They can bring



1       that back before the Court and the Court will either approve  
2       or disapprove those committees. But I think I'd just as soon  
3       take that in that step as opposed to my deciding who's best  
4       to be on the executive committee. There's a lot of people in  
5       this room I don't know.

6               MR. BECNEL: Okay. Thank you, your Honor.

7               THE COURT: Okay. Anybody else want to address the  
8       consumer -- yes, sir. Sir.

9               MR. ARROYO: Shareholder derivative, your Honor.

10              THE COURT: Okay. Let's pick up the shareholder  
11       after we -- in other words, let's go through the bank cases,  
12       then we'll go to the shareholder.

13              MR. ARROYO: Thank you, your Honor.

14              THE COURT: Okay. Anybody else on the consumer?  
15       If not, let's go to the bank cases.

16              MR. ZIMMERMAN: Your Honor, I'm Bucky Zimmerman.  
17       I'm applying as the overall. I don't know if you want me to  
18       speak now or after the --

19              THE COURT: Sure, go ahead.

20              MR. ZIMMERMAN: Your Honor, I ask to be appointed  
21       as the overall lead counsel in all three cases. I pledge to  
22       serve the Court with honor and with integrity. I believe the  
23       history of my work before this court speaks for itself and I  
24       hope it is positive. I think I bring the right combination  
25       of experience and sensitivity and communication skills and

1        advocacy to this case. I think I said in my papers, and I  
2        will repeat today, Target is an important and valued citizen  
3        of our community. That does not mean I would not have  
4        vigorous advocacy, but I want to give them the respect that  
5        they deserve, having been grown in this community and having  
6        done so well by the citizens of this community. And I just  
7        want the Court to know I feel that sensitivity and I will  
8        remain sensitive to that. Your Honor, we've always been  
9        involved in our firm with cutting-edge issues, and we've  
10       traveled roads to get us to reasonable and just resolutions  
11       of cutting-edge issues. I think we have one here. And I  
12       pledge to you to use the same experience and the same type of  
13       creativity to bring about the right advocacy and the right  
14       resolution. I will conclude by saying I will abide by the  
15       manual for complex litigation, which asks us to work  
16       cooperatively, to achieve efficiency and economy without  
17       jeopardizing fairness to the parties. I believe I'm the only  
18       one who has applied for the overall lead, but I believe that  
19       I would be particularly well suited for that role, knowing  
20       all of the other people, having worked with all the other  
21       people except, perhaps, some of the shareholder people. But  
22       certainly in both the banking side and on a consumer side.  
23       Not only have I worked with them, but I would call them my  
24       friends. And I will pledge to do dignity to this court.

25                    Thank you.

1 THE COURT: Okay. Thank you.

2 MR. CAMBRONNE: Good morning, your Honor. My name  
3 is Karl Cambronne. I have submitted papers in-camera, also,  
4 as you know, and offer myself for a leadership position in  
5 these cases. I have filed a bank case; there's where I'm  
6 anxious to participate and play a meaningful role. But let  
7 me say one thing that I think needs to be said out loud and  
8 that is the number of lawyers sitting behind me, your Honor,  
9 and those on the phone and those who are not here really  
10 compels leadership in this case to have a sine qua non of  
11 efficiency and professionalism. We have lots and lots of  
12 good lawyers here that are going to help bring this matter to  
13 a proper resolution at some point in the future. It's going  
14 to be incumbent upon anybody who is appointed leader of this  
15 case, whether it's the overall or overarching leader, or one  
16 of the categories of cases, your Honor, to really emulate  
17 those sorts of criteria when they appear, not only before  
18 this court but their interactions with defense counsel and  
19 their interactions with their colleagues on the same side of  
20 the fence. I want to also state that I echo entirely Bucky  
21 Zimmerman's notion that we're not dealing here with a  
22 villain. Target has got a problem, Target needs to have a  
23 problem solved. But Target is a good member of this  
24 community, they do a lot for this community, they do a lot  
25 around the country. And we approach this case, we should

1 approach this case, and I intend to approach this case, with  
2 that in mind. Thank you, your Honor.

3 THE COURT: Okay. Thank you, Mr. Cambronne.

4 MS. RIEBEL: Good morning, your Honor.

5 THE COURT: Good morning.

6 MS. RIEBEL: I'm Karen Hanson Riebel with the law  
7 firm Lockridge, Grindal, Nauen, in Minneapolis. I submitted  
8 leadership papers on behalf of 20 of the banks on file in the  
9 bank cases, seeking to be lead of the bank portion of this  
10 litigation. Those banks, I think it bears noting, and it is  
11 put forth in our papers, are the largest banks that have  
12 filed suit in this case. We also represent many small banks,  
13 we represent banks across the country. I believe that there  
14 are -- well, there are many law firms that requested that I  
15 step forward and serve as lead in this litigation. And I did  
16 so. I absolutely echo the sentiments that Mr. Zimmerman and  
17 Mr. Cambronne have put forth about the integrity of this  
18 court and of this state. I would like to serve in the  
19 leadership capacity. And I think the number of banks that I  
20 was able to work with and coordinate and consolidate to move  
21 forward together, and the leadership papers that I submitted,  
22 shows that I will be able to do that and do it well.

23 THE COURT: Okay. Thank you very much.

24 MR. BLANCHFIELD: Good morning, your Honors. My  
25 name is Garrett Blanchfield. I am from the firm Reinhardt,

1 Wendorf & Blanchfield, which is located across the street  
2 from this courthouse. You'll have to excuse my voice. I'm  
3 fighting off some kind of superbug that has leapt from family  
4 member to family member for two months now.

5 THE COURT: It's located in this block.

6 MR. BLANCHFIELD: Is it?

7 THE COURT: I'm struggling with the same thing.

8 MR. BLANCHFIELD: I'm sorry to hear that. I hope  
9 yours resolves more quickly than my family's.

10 I'm also seeking a lead counsel position; I have  
11 put in my papers for that. I'm happy to serve in whatever  
12 capacity this court deems appropriate for my firm. My  
13 qualifications are in my papers and, based on those  
14 qualifications, I think I am qualified to lead or co-lead  
15 this litigation. Unless the Court has any questions, I'm  
16 just going to rest on my papers and rest my voice.

17 THE COURT: Thank you very much, Mr. Blanchfield.

18 MR. BLANCHFIELD: Thank you.

19 THE COURT: Maybe the rest of the people wish I  
20 would, too.

21 Yes, sir.

22 MR. BARNOW: Good morning, your Honor. My name is  
23 Ben Barnow from Barnow & Associates, in Chicago. My stepping  
24 up is a variation on a theme. As the Court may be aware, I  
25 filed papers supporting other Minnesota people. And I stand

1 by those papers. And as I said in my papers, because of  
2 leadership roles, those individuals have not only sought, but  
3 the leadership activity that they've affected to date.  
4 Having said that, I also believe that the cases that I have  
5 settled in the data-breach area, probably more than anybody  
6 in the country, although the hands may go up here. I don't  
7 think there's any other bigger ones. I was the lead counsel  
8 in *TJX*, which was 50 million people. I was the lead counsel  
9 in *Certegy*, *Countrywide* and, then, *Heartland*, which was, I  
10 guess, the mother lode of it all. I wasn't going to get up  
11 other than to restate my support for the people I did put in  
12 my papers. But, additionally, my colleague, Mr. Davidson,  
13 got up and mentioned *Sony PlayStation*. I just wanted to  
14 point out to the Court that, while I didn't mention that in  
15 my papers, I'm also a member of the plaintiffs' steering  
16 committee there. And even though seven people were  
17 appointed, it was a very harmonious relationship, it  
18 continues to be. And is yet another large data-breach case.  
19 What I think is important in these cases is the ability of  
20 counsel to seriously consider resolution. I heard one of the  
21 candidates for the big positions here mention that. And I  
22 endorse that. I also noted in the papers from Target that  
23 they may have that interest. Well, sometimes there's a  
24 settlement over here and a settlement over there. And  
25 whether or not they ever come together, I don't know.

1 But I stand ready to work with the people that I mentioned in  
2 my papers, or any other appointees, to bring to the table  
3 whatever value that experience might have. Thank you.

4 THE COURT: Okay. Thank you very much. I may need  
5 a transcript about that business about resolution. That's  
6 music to the ears of a Judge, you know that.

7 MR. BARNOW: Let me throw in a sentence. The first  
8 class action I ever did when I switched from defense work, I  
9 called up a large firm and it was -- I felt was scorched and  
10 burned. Of course, all defense firms can be viewed that way,  
11 I guess. And I said, "Your client and my client have  
12 something in common." The guy said, "No way." I said, "I'll  
13 tell you what, if I tell you what it is, and you agree, we'll  
14 have a settlement meeting." He said, "Okay." And I said,  
15 "What they have in common is resolution." We had a meeting  
16 and we settled it. Thank you, Judge.

17 THE COURT: Thank you.

18 Yes, ma'am.

19 MS. DRAKE: Good morning, your Honor. I'm Michelle  
20 Drake from the firm of Nichols, Kaster. I have submitted an  
21 application to be appointed as the overall liaison in this  
22 litigation. And in submitting that application, I thought  
23 about what might be important to the Court in appointing  
24 someone as the bridge between different groups of plaintiffs'  
25 lawyers who may, at times, have competing interests, and also

1 this court. And there are two things that I think I bring to  
2 this possible position that are important and that is the  
3 foundation in the two communities that I see as having  
4 interest in the liaison position; one is in the community of  
5 the plaintiffs' bar. And I submitted my application in  
6 connection with a consumer group with Mr. Antonus and  
7 Mr. Clifford. And I filed a consumer case. But I can say to  
8 this court that I built my firm's consumer practice largely  
9 through building relationships with plaintiffs' lawyers  
10 around the country. And when I came into this room today, in  
11 both the bank cases and the consumer cases, I can tell the  
12 Court I have strong relationships with many members of both  
13 groups, and that I believe I can faithfully serve the bank  
14 lawyers, the consumer lawyers, the shareholder lawyers. And  
15 that I also have a strong foundation in the Minnesota legal  
16 community and with this bench and this court. I've served on  
17 this court's Federal Practice Committee, and I believe that I  
18 have the respect of this court. That I understand what it  
19 means to be Minnesota nice, while also being a zealous  
20 advocate. I'm committed to that. I share the sentiments of  
21 Mr. Zimmerman and Mr. Cambronne about Target's role in our  
22 community. And I believe that I can serve faithfully as  
23 liaison between this court and the various groups of  
24 plaintiffs' lawyers who are appointed. And that's why I seek  
25 this position.



1 THE COURT: Okay. Thank you very much.

2 Yes, sir.

3 MR. PIZZIRUSSO: Good morning, your Honor. James  
4 Pizzirusso, Hausfeld, LLP, from Washington, D.C. I submitted  
5 papers in support of Mr. Cambronne and Mr. Zimmerman, your  
6 Honor. And also was willing to serve in whatever position  
7 the Court would deem appropriate for my firm. I was last in  
8 front of this court, your Honor, in the NFL litigation, where  
9 we were --

10 THE COURT: I recognized you when you stood up and  
11 I was trying to remember where it was. Okay.

12 MR. PIZZIRUSSO: Well, I argued summary judgment in  
13 front of your Honor about choice-of-law issues, successfully.  
14 My firm is also appointed in the Onity Lock litigation as  
15 co-lead with Zimmerman, and Scott + Scott, who are also here,  
16 in front of Judge Nelson. So I have had experience with  
17 Minnesota, even though I'm from Washington, D.C. And  
18 have spent several winters here and happy to do it again, if  
19 need be. Thank you, your Honor

20 THE COURT: Thank you very much, Mr. Pizzirusso.

21 Yes, sir.

22 MR. McEWEN: Good morning, your Honor.

23 THE COURT: Good morning.

24 MR. McEWEN: Greg McEwen from Inver Grove Heights,  
25 Minnesota. McEwen Law Firm. I've been in front of your

1 Honor a number of times in various matters.

2 THE COURT: Well, I wouldn't want to say your home  
3 town, or anything, but I used to be city attorney down there,  
4 you know.

5 MR. McEWEN: I know that, your Honor. I am one of  
6 the 23 law firms that have affirmed Mr. Esades in the  
7 consumer class. I want to tell your Honor that the *Horton*  
8 case, the first consumer case filed in Minnesota, is my case,  
9 your Honor. I know Mr. Esades and his good work. Albeit I'm  
10 a little out of order, I just want to affirm that I'm one of  
11 those 23 cases endorsing him for lead of the consumers.

12 Thank you, your Honor.

13 THE COURT: Thank you very much. And you're young  
14 enough that you weren't even practicing law when I was down  
15 there.

16 MR. COFFMAN: Good morning, your Honor.

17 THE COURT: Good morning.

18 MR. COFFMAN: Richard Coffman from Beaumont, Texas.  
19 I've also filed papers to be appointed lead counsel in the  
20 bank cases, but with a twist. Your Honor, I have filed a  
21 motion with the court to create a fourth track in this  
22 litigation on behalf of large individual banks who wish to  
23 pursue their claims outside the class that have large  
24 damages. Your Honor, I'll also add that I have filed on  
25 behalf of my clients the only data-breach case in this

1 litigation, and I believe ever, a case asserting RICO claims.  
2 And if the Court may recall from my papers, we put together  
3 quite a leadership team for this particular case, including  
4 Professor G. Robert Blakey, who is the noted author of the  
5 RICO statute. We believe that these RICO claims are cutting  
6 edge in this area, in data-breach litigation. So we're  
7 asking the Court to create this fourth litigation track and  
8 to appoint myself and my co-counsel, Mitch Toups who,  
9 unfortunately, couldn't be here today because he's in  
10 court-ordered depositions down in Texas as co-lead counsel  
11 for this fourth track. I'll add, just by way of experience,  
12 your Honor, I'm currently co-lead for the financial  
13 institution track in the Heartland data-breach litigation,  
14 which is pending down in federal court, in Houston, before  
15 Judge Rosenthal. That is the largest payment card --

16 THE COURT: Help me, counsel -- somebody else is on  
17 the Heartland too. What is the Heartland? When I'm in New  
18 York or Washington, I say, "I come from the heartland." I  
19 don't know....

20 MR. COFFMAN: The Heartland data-breach litigation  
21 is the result of the largest payment card data breach in the  
22 history of the universe. In this particular case, it's  
23 alleged there are 40 million payment cards that were breached  
24 -- in this Target litigation. In Heartland, I think the  
25 count now is over a hundred and thirty million. Heartland

1 Payment Systems is a payment processing company for  
2 electronic transactions in the Visa and MasterCard network.

3 THE COURT: Okay.

4 MR. COFFMAN: It's just one of the contracting  
5 parties along the line of the electronic transactions that  
6 actually processes the particular transaction and then sends  
7 it on up the line to the issuing banks for approval. Again,  
8 in that particular litigation, it's very similar to this  
9 case. We had three tracks. We had the securities cases, we  
10 had the consumer cases. And you heard from Mr. Barnow a  
11 couple of minutes ago. He's one of the co-leads for the  
12 consumer track in that case and, then, I'm one of the  
13 co-leads for the financial institution track in that case.  
14 And I'm proud to say that case continues to chug forward.  
15 The wheels of justice are grinding, albeit slowly, but they  
16 are. We are making progress in that case. I'll also say I'm  
17 co-lead currently in two other consumer medical data-breach  
18 cases at this particular point in time. So in terms of the  
19 credentials, I think that I've got the experience and the  
20 credentials, not only in the data-breach area but in leading  
21 MDL class actions. So we would just request a creation of  
22 this fourth track for larger individual financial  
23 institutions. And, by the way, banks aren't the only issuers  
24 here, credit unions are too.

25 THE COURT: I recognize that. As you were talking,

1       you used the term "financial institutions," and I've been  
2       using the term "bank." I think your term is probably better  
3       than mine because it's more inclusive. And it is a more  
4       inclusive subject, there's no question about that.

5               Secondly, I'm kind of coming to learn very quickly  
6       that this data-breach business is quite a cottage industry.

7               MR. COFFMAN: It's a cottage industry. I'm not  
8       sure I would go so far as to say it's necessarily profitable  
9       to date, but we're working at it.

10              THE COURT: I've been doing a whole bunch of stuff,  
11       getting myself in trouble with a whole bunch of advisory  
12       opinions as we've gone through the day. I'll probably  
13       continue to do it and continue to get myself in more trouble  
14       for it. My reaction -- and I just want to hear from you. My  
15       reaction, when I saw your papers with respect to this, is,  
16       "Okay, there are going to be class motions, and all that kind  
17       of stuff, and at some point opt out."

18              MR. COFFMAN: Certainly. And that's certainly  
19       going to be available at a later point in time. But as I  
20       pointed out in my papers, not only is it unprecedented to do  
21       this, because this kind of arrangement occurs in MDL classes  
22       actions all across the country, but we believe it's more  
23       efficient at this point in time, right up front, to create  
24       this fourth track. Certainly we can opt out at a later point  
25       in time. But why litigate the case a second time down the

1 road as opposed to being right in there and litigating from  
2 the get-go. And I also believe, just by virtue of our  
3 attorney team's experience, we might be able to bring a  
4 little bit to the table and help some other folks out.

5 THE COURT: Very good.

6 MR. COFFMAN: Thank you, Judge.

7 THE COURT: Okay. Thank you very much.

8 Anybody else with respect to financial  
9 institutions?

10 MR. YANCHUNIS: Your Honor, can I --

11 THE COURT: Sure. Welcome back.

12 MR. YANCHUNIS: There are a number of lawyers who  
13 support Mr. Clifford and I and Michelle Drake and they wanted  
14 to come and take the podium. I assume that you do not want  
15 to hear from them. I asked that they not come up, and I said  
16 I would come up and tell you that.

17 THE COURT: That's understood. There are plenty of  
18 meters running. Plenty of lawyers behind each of these  
19 people have spoken. And I understand that.

20 MR. YANCHUNIS: Thank you, Judge.

21 THE COURT: Yes, sir.

22 MR. ALSALEH: Good morning, Judge. My name is  
23 Hai dar Al sal eh, I represent the consumer side, from Detroit,  
24 Michigan. Your Honor, before we move to the next point, I  
25 notice that you're only talking about executive committees

1 and steering committees. I think it would help the Court to  
2 have another third committee. You mentioned earlier geek  
3 squad. We're probably going to need something similar to a  
4 technical committee. And that's the pattern they use in  
5 pharmaceuticals, where they have a science committee to  
6 identify the issues, which is common to all the groups we  
7 have -- the consumer, the financial, the shareholders. If we  
8 could get one person from each group, and then we'll have a  
9 three-people committee called the "technology committee" that  
10 could identify the key issues relevant to this lawsuit and  
11 run forward with it.

12 THE COURT: Very good. I thank you for the  
13 suggestion. I'm just simply saying I don't think at this  
14 point in time I want to make that decision. I think I need  
15 to let some lawyers do lawyer work first and then we can come  
16 to --

17 MR. ALSALEH: I hear you.

18 THE COURT: -- how we organize all of that.

19 MR. ALSALEH: I'm with you, Judge. But the reason  
20 I'm making that --

21 THE COURT: It certainly makes sense to talk about  
22 it, because there's going to come a day where we're going to  
23 have a lot of experts involved in discussions here and that  
24 will have to be organized in a very direct way, number one.  
25 I will tell you this -- I want to tell everybody this and

1       that is a long ways down the line, when we start hearing  
2       expert depositions being taken, I want the expert on each  
3       side in the same room at the same time when those depositions  
4       are taken. It's an amazing effect it has on those people.

5               MR. ALSALEH: Your Honor, you're probably going to  
6       hear from me. I have a PhD in computer engineering.

7               THE COURT: Good for you. Congratulations.

8               MR. ALSALEH: Thank you. I appreciate it, Judge.

9               THE COURT: And I want to know where the  
10      Control -Alt-Delete button is.

11              Yes, sir.

12              MR. LOESER: Your Honor, Tom Loeser, Hagens,  
13      Berman. As was discussed earlier, I was a former cyber  
14      prosecutor with the United States Department of Justice. I  
15      wanted to just make sure the Court was aware that we have --  
16      and I think many of the plaintiffs' side have talked together  
17      in the past -- all considered the fact that this is a  
18      technology intensive subject matter. And there are going to  
19      be experience of certain attorneys and certain groups of  
20      attorneys that are going to be highly relevant to expediting  
21      the discovery process, and understanding both what Target has  
22      done, and did, and what its resources were. But also those  
23      of the Government, which has been heavily involved in this  
24      case from the outset, including, actually, having first  
25      informed Target that they had an issue. At this stage I



1 would agree with the Court that there doesn't need to be a  
2 separation of a technology group, but I do think that the  
3 group selected for the various lead and liaisonships in this  
4 process, it would be very wise to make sure that there is a  
5 substantial nexus of experience, both in running data-breach  
6 cases but, also, in the underlying technology, because the  
7 lawyer team that can sit in on a deposition that can talk to  
8 an expert and it can understand the fundamentals of what is  
9 going on, what the RAM scraper is, how the exfiltration  
10 software work, those kinds of technology issues are going to  
11 be relevant even at the very initial stages of this  
12 litigation, even as early as drafting possible Amended  
13 Complaints, talking with Target about discovery, talking with  
14 the Government, as it may be appropriate. All those steps  
15 are going to be critical. And it is going to be important to  
16 have experience in data-breach cases but, more specifically,  
17 experience in investigations of data-breach cases and the  
18 technology involved. I just wanted to mention that to the  
19 Court.

20 THE COURT: Excuse me, who are you with now?

21 MR. LOESER: Hagens, Berman, your Honor.

22 THE COURT: Okay.

23 MR. LOESER: Thank you.

24 THE COURT: I didn't want to misunderstand that.

25 MR. LOESER: Yes. And we've put in --

1 THE COURT: You're not with the Government now.

2 MR. LOESER: -- we've put in a proposal for a  
3 co-lead. Thank you, your Honor.

4 THE COURT: Got it. Okay. Somebody stood up to  
5 talk about the derivative cases.

6 MR. ARROYO: Thank you, your Honor. Felipe Arroyo  
7 of the Robbins, Arroyo firm. I am here in connection with  
8 the shareholder cases. And given the number of folks in the  
9 room, I'm going to spare everybody a full recitation of the  
10 qualifications and credentials I put in my papers. There's  
11 no one else really opposing or competing, I suppose. I guess  
12 I'll just assure the Court that if there are new entrants to  
13 the case that our firm prides itself in working cooperatively  
14 with our friends, both in our space and the derivative space,  
15 as well as with the defense counsel. And I'm happy to report  
16 that I believe our firm has a very good relationship with the  
17 defense counsel, indeed with many of the folks here in the  
18 room, and I look forward to working with them.

19 THE COURT: Okay.

20 MR. ARROYO: Thank you.

21 THE COURT: I'll make this really easy. You are  
22 appointed.

23 Ms. Wildung, would you like to address the Court  
24 with respect to the defense perspective?

25 MS. WILDUNG: I would, your Honor. Just on an

1 overall organizational issue, it's triggered by the fact  
2 that, as I said before, the derivative cases, we believe, not  
3 only will have a different trajectory than the other cases  
4 but involve a different alignment of interests. When you  
5 think about it, the shareholder plaintiffs, if the case  
6 proceeds, are representing Target's interests. And, of  
7 course, Target's interests and the shareholders' interests  
8 are to successfully defend the financial institution cases  
9 and the consumer cases. So we have a concern that it would  
10 be inappropriate, and possibly unfair, to have the  
11 shareholder derivative structure within the overall umbrella  
12 of the MDL. And the devil of this may be in the details.  
13 And certainly I would anticipate that, if all the cases went  
14 ahead, there would need to be coordination, because it's in  
15 no one's interest, whoever you represent, to have duplicative  
16 efforts. But we see the interests of Target in the MDL cases  
17 and the interests of the shareholder plaintiffs in the  
18 derivative cases to be aligned, not inconsistent with one  
19 other.

20 THE COURT: Okay. Thank you.

21 MAGISTRATE JUDGE KEYES: Can I ask you a question,  
22 Mr. Wildung. What's the status of the Hennepin County  
23 shareholder derivative action? Have there been any new  
24 developments in that?

25 MS. WILDUNG: There has, your Honor. Earlier this

1 week the parties filed a stipulation seeking an Order staying  
2 that action. That's been submitted to Judge Miller. To my  
3 knowledge, she hasn't ruled on the stipulation; but if she  
4 does, then that case would be stayed.

5 THE COURT: I think, Ms. Wildung, in response to  
6 the comments that you've just made that they are well taken.  
7 There is a difference, but there's also an overlap. Like you  
8 say, the devil may be in the details. And oftentimes they  
9 are. My own feeling is, for whatever it's worth, right,  
10 wrong or indifferent, that, yes, they should coterminously  
11 move forward, something along the lines of what's been  
12 outlined on that piece of paper. But there will have to be  
13 certain severability, separation, whatever the word might be,  
14 because of what can in fact end up being conflicting  
15 interests. I think we have to be aware of it, we have to  
16 figure out a way to work with it. And that's not unusual in  
17 complex litigation. We've all seen those tensions. I think  
18 we deal with them when we see them.

19 MS. WILDUNG: Thank you, your Honor.

20 THE COURT: Okay. Anybody else want to make any  
21 further address with respect to the subject of lead counsel,  
22 et cetera? I'd like to take five minutes and take a little  
23 break, and let Judge Keyes and I confer for a minute, and let  
24 you have a little time to stretch your legs, and then we'll  
25 come. I think we'll get you to lunch before too long.

1 (Court stood in recess at approximately 12:15 p.m.,  
2 and reconvened at approximately 12:30 p.m.).

3 THE COURT: Welcome back, everybody. Counsel, I've  
4 had an opportunity to review the submissions that you've made  
5 with respect to the leadership of this matter. I came into  
6 the hearing today with a general idea of what I thought we  
7 should do. And I appreciate the submissions that have been  
8 made. I recognize that what I'm going to say momentarily I'm  
9 going to be criticized for, maybe legitimately, because it's  
10 going to be very heavily oriented to Minnesota people. I'm  
11 saying this because I feel rather strongly that this is, in  
12 fact, some Minnesota litigation and, as a result of that,  
13 will treat it accordingly. By the same token, to those from  
14 Minnesota that I'm about to make a lot of appointments, I  
15 want you to know that I highly respect some outstanding  
16 litigators from all over the United States, and that I fully  
17 expect that they will be well represented as committee  
18 members on various executive committees and performing other  
19 committee structures as things are created.

20 Having said all of this, I'm going to make the  
21 following appointments:

22 As the overall lead counsel, Karl Cambronne.

23 As the overall liaison counsel, Garrett  
24 Blanchfield.

25 As the consumer lead counsel, Vincent Esades.

1 As the consumer liaison counsel, Michelle Drake.

2 As the bank lead counsel, Bucky Zimmerman.

3 As the bank liaison counsel, Karen Riebel.

4 As the shareholder lead counsel -- I've already  
5 done that job. The Arroyo firm can do that. I think that  
6 Chris Walsh of the Walsh Law Firm was interested in being  
7 liaison counsel and, so, I'll make that appointment, as well.

8 I'm going to ask that all of these lead counsel and  
9 liaison counsel move forthwith to have a five-member  
10 executive committee, that the consumer and bank cases appoint  
11 three-member steering committees on each of them. As I say,  
12 I expect that to be done as expeditiously as possible. That  
13 the Court will make its appointments to those positions after  
14 consideration by the suggestions made by counsel.

15 Having said that, and while people are still in the  
16 building, as I indicated earlier, the Court will ask for a  
17 status conference on Wednesday, June 25. I would hope and  
18 anticipate at that time that we will either be down to a Rule  
19 26 post-Scheduling Order or at least have the outline in  
20 place for that. There's some mechanics that get involved in  
21 that, I recognize, but I really think that we need to pursue  
22 having the outline in place for that. That will, in turn,  
23 lead to the other things that come into play later on, the  
24 electronic discovery plan, the Protective Orders, all those  
25 things that get involved. This case will, by its very nature,

1 have a great deal of electronic discovery involved. I expect  
2 the parties to go to work on that electronic discovery plan.

3 I divert at this moment -- when you get old, you  
4 can go to Judges' meetings if you feel like it, or you don't  
5 go if you don't feel like it. Well, the Judges met last  
6 week, and I didn't feel like going, so I didn't. Well, they  
7 did all kinds of damage and I don't know what it is. Number  
8 one, they amended the local rules and I haven't read a word  
9 of it. I haven't got the slightest idea what's in there.  
10 But just in case it affects you in some way, well, I'll let  
11 you find out. But number two -- this, I think, is a positive  
12 thing -- they adopted an e-Discovery process that is an  
13 outline of approach to e-Discovery in this district. I'm not  
14 by any way, shape or form going to tell you that that has to  
15 be followed. It's a guideline, a guideline as you work  
16 through that process. But I want you to be aware of it. And  
17 notwithstanding the fact, like I say, I don't have any idea  
18 what's in there but, nevertheless, there's something there  
19 and know about it. In addition to that, there will have to  
20 be developed and worked out the documentary repositories,  
21 along with the search capable document production formats.  
22 The document repository, of course, isn't anything near what  
23 it used to be way back when because of the requirements of  
24 the search approach to it. So that will work out. I think  
25 we've covered the state court litigation.

1                    Obviously the different types of cases that are  
2                    involved here need to go simultaneously, and will go  
3                    simultaneously, but the consolidated discovery needs to be  
4                    worked out on a very practical method and process of getting  
5                    that done. As I indicated before, I think discovery needs to  
6                    work in an orderly manner. I don't intend to bifurcate it.  
7                    But there will certainly be discussion that will need to go  
8                    on and be worked out with respect to it.

9                    Going forward from here, I think you're aware of  
10                  the Web site. It will be [www.mnd.uscourts.gov/MDL/T](http://www.mnd.uscourts.gov/MDL/T).

11                  Your communications, first of all, my courtroom  
12                  deputy, Suzanne Ruiz, at 651-848-1156, is your primary  
13                  contact. She'll send stuff from there. E-mail, send it to  
14                  [Magnuson\\_chambers@mnd.uscourts.gov](mailto:Magnuson_chambers@mnd.uscourts.gov). For Judge Keyes, his  
15                  courtroom deputy is Jackie Phipps at 651-848-1180. With the  
16                  e-mail of [Keyes\\_chambers@mnd.uscourts.gov](mailto:Keyes_chambers@mnd.uscourts.gov).

17                  Along those lines, I do not encourage you to call  
18                  to get advice from law clerks. It just creates real  
19                  difficulties for them and it can create difficulties across  
20                  the board. If I want to backdoor somebody, call me. I can  
21                  quickly decide whether it's appropriate or not. And don't  
22                  necessarily be afraid of that.

23                  I will tell you, and please know, in this kind of  
24                  litigation, it's absolutely essential that there be ex parte  
25                  communications by the Court with parties involved in the



1        litigation. You can't have a complex MDL case without that  
2        occurring. I know the people that we've just appointed on  
3        one side. I know many of the people on the Target side.  
4        That's not going to be unethical communication but it's going  
5        to be necessary communication. And we can handle it. But  
6        just know it's going to happen. It will happen with Judge  
7        Keyes, it will happen with me. Be prepared for it.

8                In terms of forthcoming meetings, I want to see  
9        lead and liaison counsel at meetings, certainly. But beyond  
10       that, use your judgment. I love to have you here. The mayor  
11       is very happy that you're here spending your money. But  
12       aside from that, I don't know that it's necessary to be here  
13       unless you're specifically requested for particular areas  
14       that you're working on, it's going to be dealt with at a  
15       particular time or hearing.

16               Comment was made about resolution; Judges love it.  
17       I think when you meet between now and the 28th (sic) of June  
18       that not only do you start working on your 26(f) stuff, but  
19       you start working towards a road map for resolution. I don't  
20       know and you don't know. If we have to try a case, fine,  
21       we'll do it. If we have to try bellwether cases, fine, we'll  
22       do it. Know that that's the business that trial courts are  
23       in, and we'll try cases if we have to. Neither you nor I  
24       have seen very many cases tried in multidistrict litigation.  
25       And there's a good reason for that. There's complex reasons

1 for it. But there's a good reason for it. Therefore, the  
2 resolution side should not be ignored. Exactly how we'll get  
3 from here to there -- there are bumps in the road, and it may  
4 take this kind of a turn, it may take that kind of a turn.  
5 Know that Judge Keyes and I are very flexible on that  
6 subject, depending on the circumstances that are arising  
7 under whatever it is. But we're not going take our eye off  
8 that resolution ball. And don't expect to be together  
9 without that question being asked. All the local lawyers  
10 that have ever been in a Rule 16 conference with me, I always  
11 finish it with one question, "When are you going to settle?"  
12 That word continues to come into play. And it will.

13 With that, I think I'll be quiet.

14 Judge Keyes, any additional subjects that you have?

15 MAGISTRATE JUDGE KEYES: I think one thing is  
16 important and that is when we have our next status conference  
17 that you be prepared, as a result of your discussions over  
18 the next month, to submit to us a case management schedule so  
19 that we can go to work on that at that conference. Also, we  
20 do expect that you'll make significant progress between now  
21 and then with respect to your Protective Order, that's going  
22 to be critical in this case and, then, also, for your  
23 e-Discovery plan. So we'll be expecting that we will see  
24 that. And, obviously, submit ahead of time, time for us to  
25 do a good review of that before we have that next status

1 conference of those materials.

2 THE COURT: Okay. Mr. Cambronne.

3 MR. CAMBRONNE: Thank you, your Honor. I just do  
4 have a question about the -- I'm very honored by the role  
5 that you've given me. I have filed a bank case. Is it  
6 appropriate, as far as you're concerned, that I also play an  
7 active role in that bank case?

8 THE COURT: Yes.

9 MR. CAMBRONNE: Thank you.

10 THE COURT: As a matter of fact, I meant to say,  
11 Mr. Cambronne, that I recognize that you have worked  
12 primarily into the subject of the bank matters. For distinct  
13 reasons, I felt it was appropriate that you be in the overall  
14 lead position. But I fully expect, fully anticipate, and  
15 sort of know that I will see you a number of times when it  
16 comes time to make presentations and be involved in the  
17 submission of the bank litigation.

18 MR. CAMBRONNE: Thank you for the clarification,  
19 your Honor.

20 THE COURT: Okay. And that might carry over to  
21 some other people, too. We can work through that. Okay.

22 Do other people have suggestions or thoughts or  
23 ideas before we leave?

24 Yes, sir.

25 MR. GIRARD: Your Honor, may I ask a question?

1 THE COURT: You certainly can.

2 MR. GIRARD: Again, I'm Dan Girard from Girard,  
3 Gibbs. As I understand it, you are leaving to the discretion  
4 of the lead counsel in the specific case the selection of the  
5 executive committee?

6 THE COURT: I'm saying I leave to them to give the  
7 names that they suggest to the Court. The Court will make  
8 the appointment --

9 MR. GIRARD: Understood.

10 THE COURT: -- but not until after they have made  
11 their suggestions.

12 MR. GIRARD: And here's the second question. The  
13 number being three, is that number subject to variation at  
14 all if cause is shown to the Court's satisfaction?

15 THE COURT: Yes.

16 MR. GIRARD: Thank you, your Honor.

17 THE COURT: It comes down to this: There are real  
18 interests here. I have arbitrarily picked a number, which is  
19 much smaller than the number that had been submitted by other  
20 various people that had made suggestions in the past. And I  
21 recognize that. If there's good reason that you got to have  
22 another person in there, I'm not going to hold them to it.  
23 That's fine. The whole point, I don't want it to become  
24 unwieldy because, you know, I'll be darned if lawyers don't  
25 have opinions. You end up with a debating society if you get

1 a great big group. If you get a small group, you can move it  
2 more efficiently. So that's what I'm looking for. But there  
3 have been some strong suggestions made today, very  
4 appropriately, about technical expertise. It's got to be  
5 represented. I've been parochial in this appointment, I  
6 fully admit that. There are excellent lawyers from all over  
7 the United States in this room. They need to be represented,  
8 those clients need to be represented. So this is not  
9 necessarily an easy target. And however it can work out to  
10 the satisfaction -- well, it will never work to everybody's  
11 satisfaction -- but as close as possible, that would be good.

12 MR. GIRARD: Thank you very much, your Honor.

13 THE COURT: Okay. I'm going to suggest -- first of  
14 all, people are completely free to have lunch and whatnot.  
15 But I will tell you that -- I don't know about Judge Keyes,  
16 but I will be available through the day. If you have some  
17 caucus meetings in any of these other rooms that are set  
18 aside, and something comes up that you need to communicate  
19 with us about it, we'll be here and available to do so. If  
20 not, I thank you very much for coming. And I congratulate  
21 you from Chicago on a lucky shot last night. And Delta  
22 Airlines thanks you for coming.

23 (Court stood in recess at approximately 12:45 p.m.,  
24 on May 14th, 2014).

25

CERTIFICATE PAGE

I, Ronald J. Moen, an Official Court Reporter for the District of Minnesota, CSR, RMR, and a Notary Public in and for the County of Hennepin, in the State of Minnesota, do hereby certify:

That the said STATUS CONFERENCE was taken before me as an Official Court Reporter for the District of Minnesota, CSR, RMR, and a Notary Public at the said time and place and was taken down in shorthand writing by me;

That said STATUS CONFERENCE was thereafter under my direction transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a full, true and correct report of the STATUS CONFERENCE which then and there took place;

That I am a disinterested third person to the said action;

That the cost of the original has been charged to the Plaintiffs and Defendants equally.

That I reported pages 1 through 54.

IN WITNESS THEREOF, I have hereto subscribed my hand this 19th day of May, 2014.

s/Ronald J. Moen  
Ronald J. Moen,  
Official Court Reporter,  
CSR, RMR, NP